Rs.10/-

Single Bench

(3)

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P.No.4203 / 2005

Petitioner
Plaintiff : Nemi Chand Bakliwal, S/o Jorawalmal Bakliwal, Aged about 58 years, R/o Near Gurudwara Station Road, Durg, Tahsil & District – Durg (CG)

Versus

Respondents
Defendants : 1) Om Prakash Sharma, S/o Badri Narayan Sharma, Aged about 50 years, R/o Sharma Kirana Stores, Near Welcome Kiraya Bhandar, Station Road, Durg, Tahsil & District – Durg (CG)

2) M/s Badri Narayan Om Prakash Through – Sole Owner Om Prakash Sharma, S/o Badri Narayan Sharma, Aged about 50 years, Sharma Kirana Stores, Near Welcome Kiraya Bhandar, Station Road, Durg, Tahsil & District – Durg (CG)

P.R. No. 4321/05
Presented by Shri Kunal Das
Dated 24/8/05

23/8/05

WRIT PETITION UNDER ARTICLE ~~226~~ 227 OF THE CONSTITUTION OF INDIA

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(39)

मामला क्रमांक ..... WP. 4203/05 ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	7-9-2005 Shri Anup Majumdar, counsel for the petitioner. The petitioner has preferred this writ petition under Article 227 of the Constitution of India questioning the legality, propriety and correctness of the order dated 22-7-2005 passed by the First Civil Judge, Class-I, Durg, whereby learned First Civil Judge, Class-I, Durg had rejected the application filed by the petitioner under Order 38 Rule 5 of the C.P.C. for attachment before judgment on the ground that the Court was not satisfied with the material filed by the petitioner herein that respondents are likely to dispose of the property in order to defeat the decree ultimately which is going to be passed against respondents herein. I have heard learned counsel for the petitioner, perused the petition, material and the impugned order. It has been mentioned in the application (Annexure-P/4) filed under Order 38 Rule 5 of the C.P.C. that defendant No.1 has closed business of merchandise and he is preparing for disposing of the shop and building so that he is not forced to make payment of the decree, which is ultimately to be passed against him, therefore, it is necessary that the building mentioned in the application be attached before judgment. Respondents herein in their reply have stated that no amount is outstanding against him and the building which the petitioner has mentioned in the application is Joint Hindu Family Property and there	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(35)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

is no shop in this building, as such the application be rejected. As has been mentioned above, the trial Court has rejected the application of the petitioner on the ground that the Court is not satisfied with the affidavit filed by the petitioner.

Rule 5 of Order 38 of the C.P.C. envisages that "(1) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,____

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,

the Court may direct the defendant to furnish security, to produce and place property at the disposal of the Court.

Therefore, in order to satisfy the Court the plaintiff has to place some material before the Court which shows that defendants are about to dispose of the property. Perusal of the above application shows that the petitioner has not been able to make out a case whereby the Court is satisfied that the respondents are about to dispose of the property in order to defeat execution of the decree which is likely to be passed against him. Mere apprehension cannot be made a basis. The petitioner is required to satisfy the Court by

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(36)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

affidavit or otherwise, that the defendants are about to dispose of the property in order to defeat the decree.

As has been mentioned above that the application filed by the petitioner that the respondents are making preparation to go somewhere else whereas, he has stated that property which has been sought to be disposed of is Joint Hindu Family property, therefore, the Court below has rightly observed that the petitioner has not been able to show that respondents with intent to obstruct the execution of decree are about to dispose of the property.

In the circumstances, I am of the opinion that the petitioner has not been able to make out a case for invoking extraordinary jurisdiction under Article 227 of the Constitution of India. The writ petition has no force, same is liable to be dismissed and it is accordingly dismissed. However, if the petitioner receives any further information about disposing of the property by respondents, in that case, he will be at liberty to move an application afresh with material and affidavit for exercising the jurisdiction under Order 38 Rule 5 of the C.P.C.

Consequently, M.(W.)P. No.3441/2005 and I.A.No.7675/2005 stand disposed of.

Sd/-
L.C. Bhadoo
Judge

Barve

SD/FS/2005 - 20,000

16.9.05